

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X	
Capstar Radio Operating Company, a Delaware Corporation,	:
	:
	:
Plaintiff,	:
	:
v.	:
	:
Anthony Campbell; Louis Carpino; Adam Gross;	:
Jose Luis Torres; Citadel Broadcasting Corporation;	:
a Nevada Corporation; and John Does 1-10,	:
	:
Defendants.	:
	:
----- X	

Civil Case No. 08-CV- 2976 (LAK)

**DECLARATION OF L. LYNNETTE SARNO, ESQ.**

L. LYNNETTE SARNO, ESQ., being duly sworn, declares under penalty of perjury:

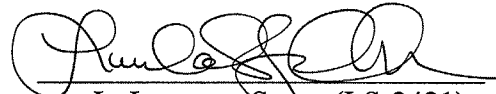
1. I am a member of the Bar of the State of New York and a partner in the firm of Seyfarth Shaw LLP, attorneys for Plaintiff Capstar Radio Operating Company ("Capstar" or "Plaintiff") in the above-captioned case. This Declaration is submitted in further support of Plaintiff's motion for an order accepting Plaintiff's notice of voluntary withdrawal without prejudice pursuant to Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure.

2. Annexed hereto as Exhibit F is a true and accurate copy of the letter from Defendants' counsel, Jeremy Feigelson, to the Court, dated March 26, 2008.

3. Annexed hereto as Exhibit G is a true and accurate copy of the letter from Defendants' counsel, Jeremy Feigelson, to the Court, dated April 22, 2008.

I declare, pursuant to 28 U.S.C. § 1746, under penalty of perjury, that the foregoing is true and correct.

Executed on May 9, 2008



L. Lynnette Sarno (LS-2421)

## **EXHIBIT F**

**DEBEVOISE & PLIMPTON LLP**

919 Third Avenue  
New York, NY 10022  
Tel 212 909 6000  
www.debevoise.com

Jeremy Feigelson  
Partner  
Tel 212 909 6230  
Fax 212 521 7230  
jfeigelson@debevoise.com

March 26, 2008

**BY HAND**

Honorable Lewis A. Kaplan  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, NY 10007-2012

**Capstar v. Campbell et al.  
No. 08 CV 2976 (LAK)**

Dear Judge Kaplan:

On behalf of defendants, we write to request a conference and the entry of an order confirming the schedule set at Monday's hearing. We make this request in light of plaintiff's filing last night of a purported Notice of Voluntary Dismissal under Rule 41(a)(1) of the Federal Rules of Civil Procedure.

**Background**

On Monday, the Court denied plaintiff's application for a TRO and the parties agreed on the record to specific dates for expedited discovery and an evidentiary hearing. Plaintiff asserted that any jurisdictional defect arising from the lack of diversity as to defendant Citadel Broadcasting Corporation ("Citadel") was curable by amending the complaint to add a claim under the Computer Fraud and Abuse Act ("CFAA"). The Court also noted its authority to dismiss Citadel and retain jurisdiction over the balance of the case. *See* Transcript (Mar. 24, 2008), attached at tab A.

Yesterday afternoon, plaintiff's counsel advised me that plaintiff would be serving discovery requests as agreed to on the record Monday. We served defendants' discovery requests yesterday, and we also provided plaintiff with a stipulation and order that would memorialize the schedule agreed to on Monday. A copy of the proposed stipulation and order is attached at tab B.

Plaintiff's counsel also asked yesterday afternoon if defendants would consent to allow the case to proceed in state court rather than federal court. The stated reason for the request was that plaintiff now realized it could not obtain federal jurisdiction on

Honorable Lewis A. Kaplan

2

March 26, 2008

diversity grounds over any relevant Citadel corporate entity. The CFAA went unmentioned. Plaintiff's counsel also stated that it was necessary to have a corporate defendant in order to explore the "Ask the Expert" issue, apparently disregarding the availability of third-party discovery. I advised that I had no authority to consent and that we regarded plaintiff as bound by the agreed procedure set at Monday's hearing.

Yesterday evening just before 9 p.m., plaintiff filed via ECF, and faxed to me, a purported Notice of Voluntary Dismissal pursuant to Fed. R. Civ. P. 41(a). *See* tab C. Shortly thereafter we served an answer via U.S. Mail on behalf of the Individual Defendants, as soon as we obtained consent from them to serve it on their behalf. *See* tab D. We were unable to obtain instructions yesterday evening from our client Citadel because the general counsel was on an airplane.

### **Argument**

#### **I. Plaintiff's Notice of Voluntary Dismissal Is Ineffective.**

Plaintiff cannot dismiss this case without moving for and obtaining a court order under Rule 41(a)(2), for three reasons:

*First*, defendants served an answer on behalf of the Individual Defendants on the same day as plaintiff filed its Notice of Voluntary Dismissal, making recourse to unilateral dismissal unavailable to plaintiff. Under all the circumstances, the fact that plaintiff's ECF filing slightly preceded the mailing of defendants' answer on the same day does not entitle plaintiff to circumvent Rule 41(a)(2) and its requirement that the Court approve dismissal of the case. *See Grass v. Citibank, N.A.*, 90 F.R.D. 79, 80 (S.D.N.Y. 1981) (declining to treat Rule 41(a)(1) notice of dismissal without prejudice as effective, in part because "one of the defendants filed an answer on the same day that the plaintiff filed a notice of dismissal without prejudice").

*Second*, the procedure and schedule set on Monday are binding just as any terms set on the record in open court are binding. Plaintiff's request yesterday afternoon that defendants consent to proceed in state court reflected a concession that it had already foregone unilateral voluntary dismissal under Rule 41(a)(1). Notably, plaintiff did not reserve any rights in this regard at Monday's hearing; it joined in the scheduling discussion and asked only for modest adjustments to the dates proposed by defendants.

*Third*, regardless of the timing of the answer, the prior proceedings in this case bring it within the requirement of Rule 41(a)(2) that a court order must precede any dismissal. Although this case is young, there is an extensive record already before the Court (six declarations were submitted by plaintiff and five by defendants) and a TRO application has already been heard and denied after the Court considered that record. That brings this case in line with *Harvey Aluminum, Inc. v. Am. Cyanamid Co.*, 203 F.2d 105 (2d Cir. 1953), where the Court of Appeals held that when "the merits of the

Honorable Lewis A. Kaplan

3

March 26, 2008

controversy were squarely raised and the district court in part based its denial of the injunction on its conclusion that the plaintiffs' chance of success on the merits was small," then voluntary dismissal was not permitted even though it "was attempted before any paper labeled 'answer' or 'motion for summary judgment' was filed." While subsequent cases confirm that an answer or summary judgment motion generally is necessary to trigger the court order requirement of Rule 41(a)(2), *Harvey* remains good law, and it is directly applicable here where the Court has stated, "I don't see any hard facts" on irreparable injury and "[t]hat goes also to the issue of likelihood of success on the merits." *See* Transcript at 36.

## II. No Order of Dismissal Should Issue.

It is apparent that plaintiff prefers not to proceed before Your Honor, but its hope of finding a state judge who might view the case more favorably is not a proper purpose under Rule 41(a)(2). 8 Moore's Federal Practice § 41.40[7][b] at 41-158 ("A motion for a voluntary dismissal should generally be denied when the purpose is to avoid an adverse determination on the merits of the action.").

Nor does the prospect of delay – trading expedited bilateral discovery and an imminent trial date in this Court for the notoriously slow train of state-court proceedings – provide a proper purpose. *Id.* § 41.40[7][c] at 41-163 ("The district court should not permit a voluntary dismissal to be employed as an easy substitute for an adjournment of a scheduled trial."); *id.* § 41.40[7][d] ("The district court should not permit the plaintiff voluntarily to dismiss the action to thwart discovery deadlines."). Losing the expedited schedule already agreed to would be particularly detrimental to the Individual Defendants. They deserve to have the cloud of this meritless litigation lifted as soon as possible. Plaintiff's attempted move to state court also stands in contrast to the urgency that it professed before Your Honor on Monday, and before Judge Baer on Good Friday.

We respectfully request that the Court convene a conference to address this matter. We believe that an appropriate remedy would be for the Court to enter the scheduling and confidentiality order attached at tab B.

Respectfully yours,



Jeremy Feigelson

Attachments

cc (by hand): L. Lynette Sarno, Esq.

**TAB A**

83oncapa.txt

1

83oncapa  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
-----X

CAPSTAR RADIO OPERATING  
COMPANY, a DELAWARE  
CORPORATION,

Plaintiff, New York, N.Y.

v. 08 Civ. 2976 (LAK)

ANTHONY CAMPBELL, LOUIS  
CARPINO, ADAM GROSS, JOSE LUIS  
TORRES, CITADEL BROADCASTING  
CORPORATION, a Nevada  
Corporation and JOHN DOES 1-10

Defendants.

-----X

March 24, 2008  
2:30 p.m.

Before:

HON. LEWIS A. KAPLAN,

District Judge

APPEARANCES

SEYFARTH SHAW  
Attorneys for Plaintiff  
BY: L. LYNNETTE SARNO  
GLORIA GALANT

DEBEVOISE & PLIMPTON  
Attorneys for Defendant  
BY: JEREMY FEIGELSON  
TRICIA BOZYK SHERNO

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

2

83oncapa

(Case called)

THE COURT: All right, Ms. Sarno.

MS. SARNO: Good afternoon, your Honor.

We represent Capstar Radio Operating Company.

THE COURT: Use the lectern, please.

MS. SARNO: Sure.

Good afternoon again.

As mentioned, we represent Capstar Radio Operating  
Company, and for ease purposes because Capstar is a subsidiary  
of ClearChannel communications, I'll refer to them as  
ClearChannel.

Your Honor we are here this afternoon at the request

Page 1



83oncapa.txt

13 of a temporary restraining order on these individual defendants  
14 Mr. Campbell, Mr. Carpino, Mr. Gross and Mr. Torres, as well as  
15 Citadel with regard to unfair competition that they have  
16 engaged in, in the mere 17 days since they left ClearChannel.  
17 In the short time we have learned many things which leads us to  
18 believe that they have engaged in a concerted --

19 THE COURT: Let's start with whether I have  
20 jurisdiction.

21 MS. SARNO: Sure, your Honor.

22 I understand that one of the issues that was raised  
23 was -- and we just received Citadel's papers now, but we  
24 certainly believe there is diversity jurisdiction. Capstar and  
25 its parent company ClearChannel is a Delaware corporation with

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

3

83oncapa

1 its principal place of business in Texas.

2 In addition to that issue, because of the information  
3 that we keep learning as time goes, we also believe that we  
4 have a Computer Fraud and Abuse Act action.

5 THE COURT: I'm sorry.

6 MS. SARNO: What has happened since we've brought this  
7 action as well is that we continue to gain information that  
8 leads us to believe that we will also have a Computer Fraud and  
9 Abuse Act action, that we will be able to amend this claim.

10 THE COURT: But jurisdiction is determined as of the  
11 moment of the filing of the complaint. Right?

12 MS. SARNO: Yes, your Honor.

13 THE COURT: So as of the moment of the filing of the  
14 complaint, did I have any jurisdiction?

15 MS. SARNO: We did not know. It was our understanding  
16 that Citadel was a Nevada corporation incorporated in Nevada.

17 THE COURT: I understand that's what you thought. Is  
18 there any dispute over the fact as of now that they are in fact  
19 a Delaware corporation?

20 MS. SARNO: The only information that I have is what  
21 was given to me today. So we have been unable to confirm that.  
22 But I certainly would expect that --

23 THE COURT: Did you look at their 10-K before you  
24 filed the lawsuit?

25 MS. SARNO: I believe we did. We must have gotten it  
SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4

83oncapa

1 mixed up with another entity.

2 THE COURT: You think there is another publicly held  
3 company with registered securities that's got another 10-K that  
4 is also called Citadel?

5 MS. SARNO: To be honest, your Honor, I don't know.  
6 But it is my understanding that we did check on their  
7 jurisdictional issues.

8 THE COURT: Go ahead.

9 MS. SARNO: Notwithstanding that issue, your Honor,  
10 though, we certainly believe that, given the facts that have  
11 been established, we would be able to amend our claim to  
12 include a Computer Fraud and Abuse Act action because of the  
13 fact that we have direct evidence that documentary files of  
14 ClearChannel have been tampered with and basically plagiarized,  
15 which would certainly show that they have engaged in  
16 misappropriation of our trade secrets through the use of the  
17 computer.

83oncapa.txt

18 THE COURT: You certainly don't expect me to grant you  
19 a temporary retraining order on the basis of a complaint you  
20 haven't filed, right?

21 MS. SARNO: I understand that, your Honor.

22 THE COURT: Let's focus on what's before me.

23 MS. SARNO: Sure.

24 what is before you, your Honor, is the blatant  
25 conspiracy between the parties in this action. What we have

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

5

83oncapa

1 since learned in these few days since they have left is that,  
2 as is mentioned in defendant's papers, from what I understand,  
3 a former local sales manager of ClearChannel joined Citadel at  
4 the end of February, which is exactly when his noncompete  
5 agreement with ClearChannel ended. Since then, actually within  
6 days of that, four of our salespeople joined Citadel. They  
7 resigned from two different radio stations en masse and joined  
8 a competing station of Citadel, WABC.

9 From what we understand, they have the exact same  
10 roles at the Citadel station as they had at the ClearChannel  
11 station.

12 THE COURT: They are basically entry-level salesmen,  
13 right?

14 MS. SARNO: Yes, your Honor.

15 THE COURT: So let's not get carried away with this.  
16 That's what they are.

17 MS. SARNO: Your Honor, we concede that. That is not  
18 what we think is an issue here. What we think is an issue is  
19 they have actually taken our confidential and trade information  
20 and used it for their own use.

21 THE COURT: Specifically what? Where is the evidence  
22 of it?

23 MS. SARNO: Sure, your Honor. I am happy to go  
24 through that.

25 Specifically, we have clients who have said to us,  
SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

6

83oncapa

1 directly to our employees that are mentioned in our  
2 declarations that these four salespeople have contacted them.

3 THE COURT: Is it not the case that anybody can find  
4 out who advertises on your stations by turning on the radio?

5 MS. SARNO: We recognize that, your Honor.

6 That in and of itself is not what we are concerned  
7 about. What we are concerned about is the confidential  
8 information that they gained in order to make those contacts. For  
9 example, all of our client information, and I understand the  
10 identities in and of themselves may be public, but there is a  
11 lot of background information in connection with those clients.  
12 For example, in our software which is called Radio Fusion --

13 THE COURT: Is it true that Radio Fusion is a  
14 third-party package that anybody can go buy?

15 MS. SARNO: Yes. It is not the software that we are  
16 concerned about. It's the information that's kept within the  
17 software. In that software is our pricing information, our  
18 scheduling information. That pricing is regularly updated  
19 depending upon the market.

20 THE COURT: What's the evidence that anybody either  
21 took or used your internal pricing information?

22 MS. SARNO: We know that they contacted them and

83oncapa.txt

23 certainly used it for their solicitation.  
24 THE COURT: How do you know that? where is the  
25 evidence of that?

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

♀

83oncapa

7

1 MS. SARNO: We know that they contacted them, and we  
2 think through discovery we will be able to find that.  
3 what we do have --  
4 THE COURT: Do you have an affidavit here that says, I  
5 saw the defendant take the internal information and use it in  
6 pitching client X; or I'm client X, defendant No. 3 pitched me,  
7 and in the course of pitching me he used information about the  
8 prices I paid to ClearChannel, which he could only have found  
9 out because it was from ClearChannel because it was their  
10 internal information? Is there anything like that in the  
11 record.

12 MS. SARNO: No, your Honor.

13 THE COURT: All you've got is you've got four guys who  
14 you say pitched accounts, the existence of which they knew of,  
15 and the existence of which as your accounts is knowable to  
16 probably 7 million people in the New York City area who listen  
17 to the radio, right?

18 MS. SARNO: Your Honor, what we think is the most  
19 egregious thing that's happened, and actually was the impetus  
20 for our filing was last Wednesday we received an e-mail from a  
21 client with a PowerPoint presentation that was attached to it  
22 that had what we have referred to in our papers as the  
23 Ask-the-Expert presentation.

24 That is where we have seen direct evidence that  
25 Citadel has used our proprietary information. Ask the Expert,  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

♀

8

83oncapa

1 it is a program that several of our stations developed. In  
2 fact, the gentleman who developed it at ClearChannel is one of  
3 the declarants, Bernhard Weiss. He developed that over a year  
4 ago.

5 On Wednesday evening we received an e-mail from one of  
6 our clients saying to us, gee, this looks awfully familiar.  
7 What it was is that it was ClearChannel's PowerPoint  
8 presentation, but with a Citadel station on it. In fact, some  
9 of the pictures on the cover were exactly the same. The text  
10 was the same.

11 THE COURT: Is a copy of it in your papers?

12 MS. SARNO: Your Honor, we have it available for you  
13 in camera. Because it is proprietary we wanted to keep it  
14 confidential, but we do have copies for everyone here.

15 THE COURT: This might be a good time to hand them  
16 out.

17 MS. SARNO: Your Honor, what you will see is one  
18 presentation from Z100, which is a ClearChannel station, and  
19 another presentation from WPLJ, which is a Citadel station.

20 THE COURT: You are going too fast.

21 MS. SARNO: Sure.

22 THE COURT: We are going to mark this Plaintiff's  
23 Exhibit AA for identification.

24 You are telling me this is two different documents, is  
25 that right?

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

83oncapa.txt

9

83oncapa

1 MS. SARNO: Yes. It's two different documents. You  
 2 can see they are very similar. The Z100 --  
 3 THE COURT: Ma'am, you talk far faster than I listen.  
 4 MS. SARNO: I'm sorry, your Honor. My apologies.  
 5 THE COURT: Z100 belongs to whom?  
 6 MS. SARNO: ClearChannel.  
 7 THE COURT: I see. So I only had one of them in front  
 8 of me when you said I had two.  
 9 MS. SARNO: The Light Touch lasers.  
 10 THE COURT: Yes.  
 11 MS. SARNO: That is the other one.  
 12 THE COURT: We will mark that Plaintiff's Exhibit AB?  
 13 MS. SARNO: OK.  
 14 THE COURT: AA, the one that says Z100, that's  
 15 ClearChannel?  
 16 MS. SARNO: Yes.  
 17 THE COURT: All right. And AB?  
 18 MS. SARNO: That is Citadel.  
 19 THE COURT: All right. Go ahead. Why should I be  
 20 upset about this?  
 21 MS. SARNO: Your Honor, the Ask the Expert program,  
 22 just to give you a little bit of background, is a sales program  
 23 of ClearChannel.  
 24 What they do is they allow the people within specific  
 25 industries to be expert for that station. For example, this is  
 SOUTHERN DISTRICT REPORTERS, P.C.  
 (212) 805-0300

10

83oncapa

1 the dental assistant expert for that station. They go through  
 2 this whole advertising program as to the DJs, you know, these  
 3 people and so forth.  
 4 This Ask the Expert PowerPoint that you see here was  
 5 developed by a ClearChannel sales manager, Bernhard Weiss, as  
 6 mentioned in his declaration, about a year ago.  
 7 Last Wednesday, we received what you see as AB, 1AB,  
 8 which is a PowerPoint from WPLJ radio, which is a Citadel  
 9 station. From the very beginning, your Honor, it is obvious  
 10 that one is taken from the other. On the first page alone, the  
 11 pictures on the top are the exact same pictures.  
 12 THE COURT: Are those pictures trade secrets?  
 13 MS. SARNO: No, your Honor. I am just saying that  
 14 that is probably what called it to the client's attention, but  
 15 if you look further, you will see how much more similar it is.  
 16 The second page is called "Marketing Strategy" on the Z100  
 17 proposal. It's also called "Marketing Strategy" on the PLJ  
 18 proposal. The text of it, notwithstanding the difference in  
 19 font, is exactly the same.  
 20 THE COURT: The theory of protection is what?  
 21 MS. SARNO: Your Honor, this is a sales program that  
 22 is used exclusively by the account executives of ClearChannel.  
 23 This is how they pitch to their clients on how you can become  
 24 well known in the industry as the expert of our station.  
 25 THE COURT: Let me ask you this. When you pitch to  
 SOUTHERN DISTRICT REPORTERS, P.C.  
 (212) 805-0300

11

83oncapa

1 the client, does the client who receives the pitch sign a  
 2 confidentiality agreement?  
 3 MS. SARNO: I don't know.

Page 5

83oncapa.txt

4 THE COURT: So, in the absence of evidence that that's  
 5 the case, then you are publicly performing this pitch all over  
 6 the place in circumstances in which the entire audience, to  
 7 wit, all of the prospective customers to whom you are making  
 8 this pitch, are free to tell anybody, let me tell you how  
 9 Clearchannel just pitched my business here, right?

10 MS. SARNO: Yes, your Honor.

11 But that doesn't allow Citadel to take the program  
 12 with it and take it as their own.

13 THE COURT: Why not?

14 MS. SARNO: It was a proprietary sales method of  
 15 theirs.

16 THE COURT: What does "proprietary" mean in this  
 17 context?

18 MS. SARNO: It was a manner in which they attracted  
 19 sales clients, and it was exclusive to their stations. They  
 20 are allowed to take this method of -- I am not following your  
 21 Honor.

22 THE COURT: You are speaking in totally bottom-line  
 23 conclusions. I am asking you to explain what is proprietary  
 24 about it, and you tell me that it is proprietary and  
 25 exclusively theirs. Frankly, that is not legal analysis.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

12

♀

83oncapa

1 That's rhetoric.

2 Sometimes things are proprietary because they are  
 3 trade secrets. Sometimes they are proprietary because they are  
 4 copyrighted. Sometimes they are proprietary in a specialized  
 5 sense because they're trademarked. Sometimes they are  
 6 proprietary because they are patented.

7 We are not talking about patents here. We are not  
 8 talking about trademarks here. When I inquired about  
 9 copyright, I drew a blank from you in the sense that you  
 10 weren't asserting that.

11 So, it must come down to trade secrets. Now, if the  
 12 theory of protection is trade secrets, and you are making this  
 13 pitch available without restriction to anybody who is a  
 14 prospective customer, then what is the basis for calling any of  
 15 it proprietary?

16 MS. SARNO: Your Honor, within the presentation is not  
 17 only the way in which the -- within the presentation is the way  
 18 the advertisement is actually going to be done, the methodology  
 19 of it, the streaming media of it, the use of key words, the  
 20 e-mail data.

21 Certainly what they are intending to do by showing  
 22 this particular PowerPoint, not necessarily the -- even if the  
 23 PowerPoint itself is public, the fact that they intend to use  
 24 this means of advertising, that is proprietary.

25 THE COURT: Why?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

13

♀

83oncapa

1 MS. SARNO: Because they are going to use our method  
 2 of sales for their station.

3 THE COURT: So what?

4 MS. SARNO: That would certainly fall under unfair  
 5 competition.

6 THE COURT: Suppose you were a car dealer, and at the  
 7 end of every August, you got your dealership owner to go on  
 8 television with a silly hat saying, "Come on down, greatest

83oncapa.txt

9 deals in history. Get here by Labor Day and you are going to  
 10 get a fabulous deal. We'll match any price."  
 11 well, that's the way he intends to sell cars.  
 12 Do you mean to tell me that if another dealer  
 13 somewhere else decided to do the same thing, that person  
 14 couldn't lawfully do it because somebody else was doing it?  
 15 I don't think so.  
 16 MS. SARNO: Your Honor, I agree with you with regard  
 17 to that. That means of sales is certainly far beyond what is  
 18 going on here.  
 19 Here we have an entire sales program that was  
 20 developed that shows how they are going to do banner ads, how  
 21 they are going to do streaming media, how they are going to do  
 22 these things, and they would not have had knowledge of that had  
 23 they not taken them from ClearChannel.  
 24 THE COURT: I don't mean to be rude, I really don't.  
 25 But the question "so what?" has not yet gone out of my mind.  
 SOUTHERN DISTRICT REPORTERS, P.C.  
 (212) 805-0300

14

83oncapa

1 This is a perfectly obvious way to sell radio  
 2 advertising. It is hard to imagine doing these things in other  
 3 ways.  
 4 I don't see the big deal. I don't see a trade secret  
 5 because it is not confidential. I don't see a patent. I don't  
 6 see a copyright. I don't see any of that.  
 7 So if you have an argument at all, it's some kind of a  
 8 fiduciary duty argument. It is hard for me to see that the law  
 9 of fiduciary duty extends so far as to prevent people from  
 10 doing what is really plain vanilla in the industry.  
 11 MS. SARNO: Your Honor, we would certainly not think  
 12 this particular program is plain vanilla in the industry. I  
 13 understand that selling radio ads to different stations and  
 14 using your usual sales pitch may fall under that. However,  
 15 this is a specific program that has done very well. The fact  
 16 that they are now going to use it for their stations dilutes  
 17 the market of this particular program that has done quite well  
 18 for ClearChannel.  
 19 THE COURT: There is a word for that. The word is  
 20 competition.  
 21 MS. SARNO: But, your Honor, in this particular case  
 22 we believe it is unfair competition because they have taken the  
 23 information from ClearChannel and used it for their own  
 24 purposes. Certainly the fact that we discovered this  
 25 information nearly seven business days since they left is  
 SOUTHERN DISTRICT REPORTERS, P.C.  
 (212) 805-0300

15

83oncapa

1 evidence that this is -- they left ClearChannel.  
 2 THE COURT: what if they rewrote page 2 of the  
 3 exhibit?  
 4 MS. SARNO: Your Honor, I believe and we believe that  
 5 it's the idea behind the PowerPoint that --  
 6 THE COURT: Tell me what the idea is. What is the  
 7 idea?  
 8 MS. SARNO: The idea is what they do is they reach out  
 9 to salespeople and they have an entire program of you click on  
 10 the website, there's different aspects to it, but this is one  
 11 aspect. You click on the website. It is called Ask the  
 12 Expert.  
 13 For example, on Lite FM it's one of the banners that  
 Page 7



83oncapa.txt

14 you can click. It says, plastic surgery, dentistry, and then  
 15 you click on that and it has different endorsements and  
 16 different information on this particular --  
 17 THE COURT: OK. I will go with you so far.  
 18 There are people who have bought this from you, right?  
 19 MS. SARNO: Yes.  
 20 THE COURT: So if I turn on the radio and listen long  
 21 enough, I am going to hear an Ask the Expert bit, right?  
 22 MS. SARNO: Yes.  
 23 THE COURT: Some guy is going to come on and say, I'm  
 24 a chiropractor, and I have got this fabulous way of  
 25 manipulating somebody's vertebrae and so forth. And if I am a  
 SOUTHERN DISTRICT REPORTERS, P.C.  
 (212) 805-0300

♀

16

83oncapa

1 competing ad salesman, it doesn't take much to figure out that  
 2 if I am hearing that often that is a good way to sell  
 3 advertising, right? Am I not right?  
 4 MS. SARNO: Yes, your Honor.  
 5 THE COURT: So what's the problem?  
 6 MS. SARNO: The problem is that they have taken the  
 7 exact methods of ClearChannel and used it for their own. I  
 8 understand that maybe the concept is the same, but what they  
 9 have actually done here is taken everything that they've  
 10 learned from ClearChannel and taken it over to Citadel.  
 11 Just to give you some more background, your Honor, two  
 12 of the defendants, Mr. Gross and Mr. Campbell, attended  
 13 ClearChannel training less than three business days from the  
 14 day they resigned.  
 15 We certainly think that what they have done is they  
 16 have been taking all of the methods and all of the information  
 17 that they gained from ClearChannel and brought it over to  
 18 Citadel. Whether it was by design, we can't make that call,  
 19 but certainly it's suspicious. We certainly think it would  
 20 give us a likelihood of success on the merits because what had  
 21 happened, just to give you a time line, is Jonathan Mason left  
 22 ClearChannel in November of 2007. He had a noncompete  
 23 agreement and a nonsolicitation agreement that just expired at  
 24 the end of February 2008.  
 25 Immediately thereafter, the week afterwards, we get  
 SOUTHERN DISTRICT REPORTERS, P.C.  
 (212) 805-0300

♀

17

83oncapa

1 notices of resignation from these four people. Two of those  
 2 people attended our training process called Solution Based  
 3 Selling the Wednesday before they resigned.  
 4 They have now taken all of that information and  
 5 brought it over to Citadel. Certainly in that time frame they  
 6 gained so much information about ClearChannel products,  
 7 ClearChannel --  
 8 THE COURT: What did they gain? Is there any showing  
 9 here in the record?  
 10 MS. SARNO: They gained all of the training that they  
 11 received from ClearChannel University, your Honor.  
 12 THE COURT: Listen, the last time I looked,  
 13 ClearChannel University was not in the Ivy League. To tell me  
 14 ClearChannel University, it is just more advertising hype.  
 15 It's meaningless. It is an employee training program.  
 16 What were they trained on? What is the information  
 17 that's so sensitive?  
 18 MS. SARNO: Within that program, your Honor, they

83oncapa.txt

19 learned ClearChannel's sales techniques, ClearChannel tips --  
 20 THE COURT: What specific techniques did they learn,  
 21 and what's the evidence that they are trade secrets? What is  
 22 the evidence, for example, that they are not exactly the same  
 23 as the sales techniques that Citadel was using before they ever  
 24 went to Citadel?

25 MS. SARNO: Your Honor, we would not know what  
 SOUTHERN DISTRICT REPORTERS, P.C.  
 (212) 805-0300

18

83oncapa

1 Citadel's sales techniques are, but certainly these are  
 2 techniques that have taken years and an extensive amount of  
 3 resources to develop.

4 THE COURT: Where is the evidence of that?

5 MS. SARNO: We have the declaration from the  
 6 salesperson, and we don't have it here, but the actual booklets  
 7 and the training programs are quite extensive.

8 THE COURT: If I had in here XYZ Chevrolet, they could  
 9 make exactly the same arguments at this level of generality.  
 10 They would tell me that our car salesmen have got all this  
 11 wonderful training that we have developed over our 60 years in  
 12 business, and wowie, it's fabulous. At the end of the day it  
 13 may be nothing more than what each and every one of us who has  
 14 ever bought a car knows for having been through the process.  
 15 This is all generalities.

16 MS. SARNO: Your Honor, what the solution based  
 17 selling includes are client resources, where exactly they  
 18 should go within the company to get certain information. They  
 19 have --

20 THE COURT: Where within ClearChannel?

21 MS. SARNO: Yes, where within ClearChannel.

22 THE COURT: You think that's extremely valuable to  
 23 Citadel, do you?

24 MS. SARNO: Sure.

25 THE COURT: Why?

SOUTHERN DISTRICT REPORTERS, P.C.  
 (212) 805-0300

19

83oncapa

1 MS. SARNO: The information that they now have they  
 2 know where --

3 THE COURT: You are telling me that it is very  
 4 important for Citadel to show where within ClearChannel they  
 5 should go to find something out if they were selling ads for  
 6 ClearChannel?

7 MS. SARNO: Yes, your Honor. They had access to that  
 8 while they were there.

9 THE COURT: So what?

10 They probably knew where the men's room was too, but I  
 11 don't think that would be too valuable to Citadel in most  
 12 circumstances.

13 MS. SARNO: Your Honor, the information that they  
 14 gained during the time that they were there is certainly  
 15 important, could certainly be important to Citadel.

16 In addition to just that information, they also had  
 17 all the access to the different ClearChannel products, all the  
 18 different proposals into the future that they planned on  
 19 creating.

20 within that Radio Fusion, your Honor -- I don't want  
 21 to lose sight of what was in that client information that they  
 22 had. We understand that the client lists in and of themselves  
 23 are readily available. If I turn on the radio it is available.



83oncapa.txt

24 But it is the information about those clients which is what was  
 25 proprietary. In the Radio Fusion, which is a third-party  
 SOUTHERN DISTRICT REPORTERS, P.C.  
 (212) 805-0300

20

♀

83oncapa

1 program provided by Viero, in there was the company's pricing,  
 2 scheduling, history of sales.  
 3 THE COURT: Is there any evidence they walked out of  
 4 there with a piece of paper or a CD or a magnetic medium that  
 5 has any proprietary information on it?  
 6 MS. SARNO: Not at this time, but certainly that may  
 7 be developed.  
 8 THE COURT: You think they could remember all this  
 9 stuff if they ever looked at it?  
 10 MS. SARNO: Certainly the names of the people could be  
 11 remembered, but not the information in there because that  
 12 information is quite detailed. It shows the pricing points, it  
 13 shows differences in pricing points.  
 14 THE COURT: All right. Don't you think that if they  
 15 were selling ads to an account against ClearChannel and  
 16 ClearChannel was offering the account a better deal than the  
 17 account would say, "Hey, I am being offered the following by  
 18 ClearChannel. You are going to have to beat that?"  
 19 Don't you think that's likely?  
 20 MS. SARNO: Not necessarily, your Honor. I mean, even  
 21 if that were the case, certainly, it would be a different sales  
 22 pitch if I were to know that ahead of time and wouldn't have to  
 23 get into that negotiation. Certainly it could lead to better  
 24 pricing for them.  
 25 THE COURT: But you have no evidence that any of them  
 SOUTHERN DISTRICT REPORTERS, P.C.  
 (212) 805-0300

21

♀

83oncapa

1 has that information, right?  
 2 MS. SARNO: Well, they had access to it at that time,  
 3 your Honor.  
 4 THE COURT: Right. There was a time when I had access  
 5 to the entire contents of the Harvard University libraries, but  
 6 I can't repeat them to you.  
 7 MS. SARNO: Your Honor, but these particular people  
 8 had focused on particular clients. They focused on particular  
 9 industries, and each of them were different. Certainly they  
 10 can remember that information with regard to the ones that they  
 11 dealt with closely.  
 12 THE COURT: When you say "remember that information,"  
 13 you mean specifically what?  
 14 MS. SARNO: For example, the history of a client's  
 15 sales within that radio station, the pricing and the change of  
 16 pricing, the specific information about who to contact there  
 17 and how to pierce the company. I understand that in the radio  
 18 industry it can be very difficult to pierce client contacts.  
 19 THE COURT: Anything else?  
 20 MS. SARNO: Your Honor, just to touch on it as well,  
 21 certainly the scope and duration of this agreement is very  
 22 narrow and should be enforced. 180 days within a small  
 23 industry of radio, within the industry of radio and television  
 24 in the New York area is very reasonable.  
 25 THE COURT: The law in New York is that those  
 SOUTHERN DISTRICT REPORTERS, P.C.  
 (212) 805-0300

22

♀

83oncapa.txt

83oncapa  
1 agreements, correct me if I am wrong, are utterly unenforceable  
2 except to the extent necessary to protect trade secrets.  
3 Isn't that essentially right?  
4 MS. SARNO: Absolutely, your Honor.  
5 THE COURT: Where are the trade secrets?  
6 MS. SARNO: Again, we believe the trade secrets are  
7 within the advertising techniques and programs that they not  
8 only have been aware of but have already used for the benefit  
9 of Citadel. The information within Radio Fusion that is kept  
10 about each particular client and each client that they dealt  
11 with we certainly believe is proprietary to ClearChannel, and  
12 the fact that they have reached out to them has shown malice on  
13 their part that they are already engaging in such  
14 misappropriation and unfair competition.  
15 THE COURT: The argument proves more than a little too  
16 much. It proves they would like to continue supporting their  
17 families or eating. And it proves that they know that these  
18 are accounts, which anybody else in New York who turns on a  
19 radio knows, right?  
20 MS. SARNO: Your Honor, it is not the fact that they  
21 know the accounts, but the information about the facts that  
22 we're concerned about.  
23 THE COURT: But you don't know that. You are guessing  
24 as to that. OK. Thank you very much.  
25 MS. SARNO: Thank you, your Honor.  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

23

♀

83oncapa  
1 THE COURT: Mr. Feigelson.  
2 MR. FEIGELSON: Good afternoon, your Honor. Jeremy  
3 Feigelson from Debevoise & Plimpton. We represent the  
4 individual defendants as well as Citadel, with me is my  
5 colleague Tricia Bozyk Sherno.  
6 THE COURT: What about this Ask the Experts bit?  
7 MR. FEIGELSON: Let's go right there, Judge.  
8 First of all, you have in the record, we submitted  
9 this afternoon some declarations from each of the four  
10 individual defendants disclaiming any knowledge of the  
11 PowerPoint presentation that we have just seen for the first  
12 time and how, if it made its way into Citadel's hands and it  
13 was utilized in any way to create the Citadel version of that  
14 PowerPoint, these four individuals know nothing about it. That  
15 is now a matter of record, Judge. So it provides no basis for  
16 any injunction against them.  
17 We have had this case, your Honor, since late Friday  
18 afternoon. Over the holiday weekend we have been able to learn  
19 a lot of facts, but not all the facts. I cannot, sitting here  
20 today, give your Honor a good explanation of the degree to  
21 which the slides are similar and what role anyone within the  
22 Citadel organization may have played. That is something  
23 obviously that we will look into.  
24 But I want to emphasize, your Honor, that the program  
25 itself, Ask the Expert, as your Honor suggested in the colloquy  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

24

♀

83oncapa  
1 with Ms. Sarno, there is really nothing special or confidential  
2 or proprietary about it.  
3 THE COURT: It is not dissimilar to Car Talk in a  
4 segment called "Stump the Chumps."

83oncapa.txt

5 MR. FEIGELSON: I am a fan of that show, your Honor,  
6 so I would not disagree. I was going to direct the court to  
7 the Campbell declaration, which is Exhibit 5 in the declaration  
8 package that we handed up to your Honor earlier.

9 If the Court looks at Exhibit E to the Campbell  
10 declaration, you will see there are two Internet promotions for  
11 radio sales programs called Ask the Expert which appear to be  
12 essentially identical. These are from two other radio station  
13 companies, Sinclair and Entercom, which have nothing to do with  
14 either Citadel or ClearChannel.

15 This is a concept, your Honor, that has been out there  
16 in the radio industry for --

17 THE COURT: For a million years.

18 MR. FEIGELSON: -- years and years.

19 While the similarity between the couple of the slides  
20 and the PowerPoint is a matter of curiosity, Judge, I think  
21 it's fair to say that it is of no legal consequence,  
22 particularly since the program itself does not embody any kind  
23 of a protectable concept. It's what everybody in the business  
24 does. It is how everybody sells.

25 If the Court has other questions about Ask the Expert,  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

25

¶

83oncapa

1 I would be pleased to try to answer them. Otherwise I do want  
2 to touch on jurisdiction.

3 THE COURT: I am afraid of asking the expert.

4 MR. FEIGELSON: Jurisdiction, your Honor, is quite a  
5 serious issue. Citadel's incorporation is a matter of public  
6 record. The 10-K that is in the exhibit package that we handed  
7 up, that we submitted to chambers earlier today, Exhibit 9 to  
8 the Feigelson declaration, is the cover page from Citadel's  
9 10-K, that, of course, is a publicly available document, your  
10 Honor. We have pulled it down from Citadel's website. It is  
11 there for the world to see, including ClearChannel and its  
12 counsel. It is a complete answer to the assertion that there  
13 is diversity jurisdiction here.

14 To be clear, your Honor, the complaint only asserts  
15 one ground for federal jurisdiction. That is diversity.  
16 Diversity, of course, requires complete diversity.

17 You will see in the caption that Capstar asserts that  
18 it is a Delaware corporation. We now know that Citadel  
19 Broadcasting also is a Delaware corporation. That means, your  
20 Honor, that wherever this case belongs, if it belongs anywhere,  
21 it does not belong in federal court.

22 THE COURT: Not necessarily, because if I thought it  
23 appropriate, I could permit Citadel to be dropped as a party,  
24 right?

25 MR. FEIGELSON: You could, your Honor. We are  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

26

¶

83oncapa

1 certainly aware of that possibility. That's why in our papers  
2 we did go to on to address the merits. I will go into those  
3 issues now.

4 Our position, your Honor, is that certainly there is  
5 no basis in today's record for a TRO. There will never be a  
6 basis, even after the record is developed, but certainly not  
7 today.

8 Today, after two days of investigation that we have  
9 been able to document very thoroughly in our papers, Judge,

83oncapa.txt

10 there is absolutely nothing proprietary or confidential that is  
11 at issue in this business dispute.

12 This is a dispute about front-line radio ad salesmen,  
13 as your Honor noted. It is not about people with access to  
14 high-level corporate information. It is not about the secret  
15 formula for Coke.

16 We are talking about a handful of categories of  
17 information. Each of them is shown very comprehensively in our  
18 papers, Judge, based on just two days of investigation, to be  
19 matters of public record. Customer identities, not only your  
20 Honor, are they available to any listeners of the radio, but  
21 again, pointing to the Campbell declaration, if the Court looks  
22 at Exhibit B to the Campbell declaration, this is a report from  
23 a subscription based web service called Media Monitors. What  
24 this shows, your Honor, is, with a couple of clicks of a mouse,  
25 any salesmen in this industry can call up an extremely detailed

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

27

♀

83oncapa

1 station-by-station, day-by-day, day part-by-day part report of  
2 exactly who is advertising on what radio stations.

3 It is a report that your Honor sees in the record here  
4 was actually called up by Mr. Campbell, one of the individual  
5 defendants, using his Citadel-issued log-on ID. He's able to  
6 call up all the detail for WKTU, which is the station he used  
7 to sell for at ClearChannel.

8 Anyone can do that who has access to Media Monitors.  
9 It is a totally standard industry tool, and it is the way that  
10 salesmen using this public information fairly go after the  
11 competition regardless of whether they used to work at the  
12 competing company or not. There is an enormous amount of  
13 detail available out there that doesn't even require turning on  
14 the radio.

15 As far as customer contact information, it is also a  
16 matter of record that it is extremely easy to obtain. We are  
17 talking about salesmen who are targeting primarily small and  
18 mid-sized businesses in the New York area, car dealerships,  
19 restaurants, doctors. It does not take a lot of work, your  
20 Honor, to find out who at one of these businesses is the right  
21 contact person to make an advertising decision. It is in  
22 Mr. Campbell's declaration, again undisputed, that all it takes  
23 is typically a couple of clicks of a mouse maybe a phone call  
24 or two and you've got the right person. It is as simple as  
25 that.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

28

♀

83oncapa

1 The contact information, to the extent it is not  
2 already publicly available by looking on a business' website,  
3 is very easily re-created by anyone without special knowledge  
4 or information.

5 The other categories of information that are at issue  
6 here, Judge, I think are the software, the training, and the  
7 specific materials. The software I think it's very clear is  
8 not proprietary at all. It is described explicitly in the  
9 papers that ClearChannel submitted as proprietary software. It  
10 is just not. Every software system that's been described is  
11 publicly available for purchase by any radio station company.

12 I think it is also clear from the colloquy we just  
13 heard that there is no evidence that these individuals had  
14 taken any information from those systems, and their

83oncapa.txt

15 declarations confirm that. Those are now in the record, too.  
 16 The training is generic training. How do you sell ads  
 17 on radio? Again, this is not rocket science, your Honor. As  
 18 for specific materials, what we have been able to learn and  
 19 what the declarations confirm is that these individuals took  
 20 their contacts lists because those are public information.  
 21 They provided client contact information for clients whose  
 22 identity as customers of the ClearChannel station is already  
 23 well known. In a couple of cases people seemed to have taken  
 24 some presentation materials with them, which they have now  
 25 promised that they will return and which they have not

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

29

83oncapa

1 consulted or used any way in the few days that they have been  
 2 working for WABC.

3 THE COURT: What about the question of whether they  
 4 ought to be permitted to contact accounts that were either  
 5 handed to them at ClearChannel or that they developed beginning  
 6 while they were at ClearChannel.

7 MR. FEIGELSON: I think ClearChannel's own views on  
 8 that are quite important, your Honor. One of the things we've  
 9 suggested in our papers is that we agree with ClearChannel that  
 10 there ought to be expedited discovery. One of the major topics  
 11 we would propose to pursue in expedited discovery is how  
 12 ClearChannel looks at this very issue, because two of the  
 13 individual defendants, your Honor, have stated in their  
 14 declarations that when they came to ClearChannel, they were  
 15 encouraged or even specifically directed to pursue clients from  
 16 former radio station companies where they used to work.

17 This is how the business functions, your Honor. It is  
 18 how ClearChannel functions, too. So should they be allowed to?  
 19 I think they should certainly be allowed to do at Citadel what  
 20 ClearChannel encouraged them to do when they were at  
 21 ClearChannel.

22 THE COURT: I'm chuckling because this is deja vu all  
 23 over for me. I will explain why later.

24 MR. FEIGELSON: In any event, your Honor, should they  
 25 be allowed to -- again it goes back to the question of is there

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

30

83oncapa

1 anything confidential or proprietary here. Anyone could come  
 2 to a sales job like this, your Honor; and, equipped with the  
 3 same tools that any of these four individual defendants have,  
 4 could quickly reconstruct the same client profiles and customer  
 5 contact information for all the clients of a ClearChannel  
 6 station.

7 So it is fair competition, your Honor, and there is no  
 8 reason why these individuals should be forbidden to engage in  
 9 it.

10 It is also important to note, your Honor, that some of  
 11 the clients contacts we are talking about here are contacts  
 12 that these gentlemen brought with them from previous  
 13 employment. Certainly, it would be odd to suggest that  
 14 ClearChannel acquires a proprietary interest in a customer  
 15 relationship the individual had already developed while working  
 16 at another employer.

17 THE COURT: This is just like the wall street rating  
 18 cases when the brokers go from one house to another. Every  
 19 firm on wall street has the papers on both sides of the issue



83oncapa.txt

20 in the word processor ready to go depending on whether they are  
 21 rating or being rated.

22 MR. FEIGELSON: Well, your Honor, the fact that all  
 23 these categories of information that the plaintiffs have put in  
 24 issue are clearly matters of public information and common  
 25 sense, that is really the thread that pulls you through all of

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

31

♀

83oncapa

1 the legal theories that have been thrown up in the plaintiff's  
 2 papers.

3 All of those legal theories, including the proposition  
 4 that the noncompete should be enforced, they all require an  
 5 evidentiary showing of actual trade secrets and confidential  
 6 information.

7 I think it's very clear that there's been no showing.  
 8 In fact, with our submission today, your Honor, the record  
 9 tilts very heavily in the opposite direction.

10 We would be pleased to engage in expedited discovery.  
 11 We have included in our submission a proposed order and some  
 12 initial discovery requests.

13 We are ready to be back here in a matter of weeks  
 14 after quick document productions and quick depositions on both  
 15 sides to show your Honor on the basis of a full record exactly  
 16 why this case has absolutely no merit.

17 THE COURT: Is there any reason why I shouldn't  
 18 consolidate the preliminary injunction motion with the trial on  
 19 the merits under Rule 65(a)(2)?

20 MR. FEIGELSON: Your Honor, that is a question that  
 21 obviously I need to consult with my client on before answering  
 22 definitively, but my snap reaction is it sounds like a  
 23 reasonable idea.

24 THE COURT: Thank you.

25 MS. SARNO?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

32

♀

83oncapa

1 MS. SARNO: Your Honor, just to address a few of the  
 2 point that were raised by defendant, we are well aware of Media  
 3 Monitors. It was an Internet program that is available to  
 4 everyone and is certainly known to all account executives.

5 What we are talking about is what is available on the  
 6 information that is within Radio Fusion. Radio Fusion,  
 7 although it is provided by Viero, has been particularly  
 8 tailored for ClearChannel. In that is specific historical  
 9 purchase information, product information, benefits  
 10 information, pricing, scheduling, and sponsorship information.

11 This is all information that was kept about the  
 12 clients that these four individuals worked with. These four  
 13 individuals developed goodwill, and for the most part, with the  
 14 exception ever a few of them, were developed at ClearChannel  
 15 and were prior clients of ClearChannel long before they were  
 16 there. They now have this information to take with them.

17 With regard to the allegation that these gentlemen  
 18 were encouraged to solicit clients from their former employers,  
 19 I am aware of one of them, and, yes, he was encouraged because  
 20 there was no noncompete agreement. It is my understanding one  
 21 of the gentleman came from another radio station, and there was  
 22 no --

23 THE COURT: That ultimately doesn't matter if you are  
 24 right on the law, right?

83oncapa.txt

25 If in fact it is actionable under New York law on the  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

33

♀

83oncapa

1 theory of unfair competition to compete with a former employer  
2 for a customer to whom the changing employee was introduced  
3 while at the former employer, then the absence of a noncompete  
4 doesn't matter, right?

5 MS. SARNO: Yes, your Honor. But in this particular  
6 situation, they took the goodwill and they took the client, the  
7 confidential client information with them and they are now  
8 using it. They have admitted that they have contacted --

9 THE COURT: Don't you think that when these guys you  
10 hired and encouraged to go after their former accounts came to  
11 you that they knew what the business history and the  
12 relationship between their former employer and the clients you  
13 urged then to go after was? They couldn't have avoided knowing  
14 that if your theory holds water.

15 MS. SARNO: That is true. But without a contractual  
16 agreement restricting them or a nonsolicitation or  
17 noncompete --

18 THE COURT: If your unfair competition theory is  
19 right, the noncompete doesn't matter, does it?

20 MS. SARNO: I understand where you are going, your  
21 Honor, but certainly that goes to the ones that they brought  
22 with them. From my understanding, they're putting those aside,  
23 almost all of the clients that they worked with.

24 THE COURT: It doesn't go to the ones they brought  
25 with them. It goes to what your client's practice is.

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

34

♀

83oncapa

1 Let us posit for the sake of discussion that it is  
2 unfair competition for an employee to move from employer A to  
3 employer B and then to solicit employer A's clients because he  
4 knows things about employer A's clients that he learned while  
5 working for employer A.

6 That's your premise, right?

7 MS. SARNO: Yes.

8 THE COURT: Let's assume that to be true.

9 If your practice is, notwithstanding that principle,  
10 to take somebody who comes from employer A and goes to work for  
11 you to solicit the accounts he served while employed by  
12 employer A, then you are regularly encouraging and engaging in  
13 unfair competition, right?

14 MS. SARNO: If the circumstances are the same. The  
15 reason why I say that is I also, in addressing your Honor, the  
16 radio station -- for example, I believe it was Mr. Carpino that  
17 came from a different radio station that brought over some  
18 clients and he contacted them. It is my understanding with  
19 regard to him he came from a station that was not in the same  
20 market as ours.

21 That is the situation where he was encouraged to  
22 solicit. What we are most concerned about are the clients.

23 THE COURT: How many thousands of stations does  
24 ClearChannel have? 11,000 or 12,000.

25 MS. SARNO: 12,000.

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

35

♀

83oncapa

83oncapa.txt

1 THE COURT: Do you think you could identify more than  
2 about 11 markets in the United States that you are not in?  
3 MS. SARNO: Your Honor, I am talking about the station  
4 that they went to and the station from which they came. For  
5 example, all four of these went to WABC. WABC and WKTU and  
6 Lite FM are within the same market. That certainly is  
7 different from all the different markets that ClearChannel as a  
8 whole belongs to. What we are comparing is what station they  
9 come from and where they went.  
10 THE COURT: OK.  
11 MS. SARNO: Certainly, your Honor, we believe that  
12 information that they gained and the goodwill that they  
13 developed with these particular client contacts are proper  
14 protectable interests of the company.  
15 Thank you.  
16 THE COURT: OK. I have the same question to you on  
17 the 65(a)(2) consolidation that I asked Mr. Feigelson.  
18 MS. SARNO: Your Honor, I as well would have to  
19 consult with my client. But it certainly seems like an  
20 expedited way to address the issue.  
21 THE COURT: Let's talk about scheduling.  
22 What do you have in mind? I could try this case in  
23 April sometime.  
24 MS. SARNO: Your Honor, I understand that, if I may  
25 from here, I have not even had a chance to take a look at  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

36

♀

83oncapa  
1 defendant's proposed schedule.  
2 THE COURT: I frankly wasn't focused on that either.  
3 What about setting this down for April 23. Then if it takes  
4 more than a day, I think I can continue past that. This is  
5 unlikely to take more than two, two and a half days, right?  
6 MS. SARNO: I don't think so, your Honor.  
7 THE COURT: OK. Let's say 9:30 on April 23, at least  
8 the preliminary injunction hearing and, unless you can persuade  
9 me otherwise, trial on the merits.  
10 There is no jury demand, right?  
11 MS. SARNO: No, your Honor.  
12 THE COURT: Mr. Feigelson, there's not going to be a  
13 jury demand, right?  
14 MR. FEIGELSON: Not from our side, your Honor.  
15 THE COURT: So 9:30 on the 23rd.  
16 Expedited discovery you have agreed on. It is  
17 perfectly OK with me. I am not going to grant a temporary  
18 restraining order.  
19 First of all, I'm by no means persuaded that there is  
20 a substantial threat of irreparable injury. There's been a lot  
21 of talk of generalities, but I don't see any hard facts.  
22 That goes also to the issue of likelihood of success  
23 on the merits. With respect to that point, there's the  
24 additional problem that it appears, at least on the present  
25 state of the matter that diversity is incomplete, at least as  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

37

♀

83oncapa  
1 it respects Citadel, and maybe more broadly there will be no  
2 jurisdiction. We will see what the future holds on that. But  
3 I just don't see any reason for a temporary restraining order  
4 here.  
5 Now, if the plaintiff wants to press for a preliminary  
Page 17



83oncapa.txt

6 injunction, you can file more papers and I'll see whether I get  
7 to it before April 23, but no temporary restraining order.  
8 Let's get to the rest of the schedule.  
9 MR. FEIGELSON: Your Honor, if it is acceptable to the  
10 Court, Exhibit 2 to my declaration is a proposed scheduling and  
11 confidentiality order which lays out some dates. We did not  
12 have a chance to consult with plaintiff's counsel on this ahead  
13 of today's hearing, but it is there for everyone to look at  
14 now.  
15 THE COURT: Ms. Sarno, what is your comment on that.  
16 MS. SARNO: Your Honor, we could certainly expedite  
17 our service of document requests. However, we would ask that  
18 it be until Wednesday as opposed to tomorrow, 10:00 a.m. on  
19 3/26.  
20 THE COURT: Fine.  
21 Document requests to be served by March 26.  
22 Document production to be finished by -- what do you  
23 want to do on that. A week from today?  
24 MS. SARNO: A week from today.  
25 THE COURT: OK.

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

38

♀

83oncapa

1 March 31, completion of document requests.  
2 Given that we have the hearing on the 23rd, do you  
3 want to go beyond April 7 on depositions?  
4 MS. SARNO: Yes, please.  
5 THE COURT: How much further?  
6 MS. SARNO: A week thereafter.  
7 THE COURT: OK. Depositions and all other discovery  
8 to be completed by April 14.  
9 Exchange premarked exhibits, exhibit lists, and  
10 witness lists by April 21. We will be ready to go on the 23rd.  
11 Anything else that we need to do?  
12 MR. FEIGELSON: Your Honor, our proposed order  
13 included some confidentiality provisions. I don't want to  
14 impose on my adversary to try to agree on those on the spot.  
15 Perhaps we should submit an order that embodies --  
16 THE COURT: Submit a pretty standard confidentiality  
17 order and I will sign it.  
18 MR. FEIGELSON: Thank you, your Honor.  
19 THE COURT: Is there something else?  
20 Let's go off the record for a minute.  
21 (Discussion off the record)  
22 THE COURT: OK. If you have problems on discovery,  
23 you will let me know. Thank you, folks.  
24 (Adjourned)  
25

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

♀

**TAB B**

**Feigelson, Jeremy**

---

**From:** Feigelson, Jeremy  
**Sent:** Tuesday, March 25, 2008 5:53 PM  
**To:** 'Sarno, Lynnette'  
**Cc:** Sherno, Tricia B.  
**Subject:** RE: Capstar Radio v. Citadel, et al.

**Attachments:** dpny-22699079-v2-Scheduling and Confidentiality Order.DOC



dpny-22699079-v2-  
Scheduling an...

ear Lynnette:

As discussed, we have converted our proposed scheduling order into a stipulation and order. The calendar dates have been changed per the discussion at the hearing yesterday. We have added a statement that the April 23 hearing will be a trial on the merits. The confidentiality provisions are the same.

We look forward to your comments or signoff.

Thank you -

Jeremy

Jeremy Feigelson  
Debevoise & Plimpton LLP  
919 Third Avenue  
New York, New York 10022  
Direct dial: 212-909-6230  
Direct fax: 212-521-7230  
jfeigelson@debevoise.com

\* \* \* \* \*

PRIVILEGED AND CONFIDENTIAL

This e-mail message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure. If you are not the intended recipient, please do not disseminate, distribute or copy this communication, by e-mail or otherwise. Instead, please notify us immediately by return e-mail (including the original message in your reply) and by telephone (you may call us collect in New York at 1-212-909-6000) and then delete and discard all copies of the e-mail. Thank you.

---

From: Yu, James [mailto:JYu@seyfarth.com]  
Sent: Friday, March 21, 2008 6:51 PM  
To: Feigelson, Jeremy  
Cc: Galant, Gloria; Sarno, Lynnette  
Subject: Capstar Radio v. Citadel, et al.

Dear Mr. Feigelson:

Per the attached letters, copies of the documents filed with the Court today have been sent by Federal Express to each of the individual named defendants in the above-referenced

action.

James S. Yu  
Seyfarth Shaw LLP  
620 Eighth Avenue  
New York, New York 10018-1405  
Direct: (212) 218-5524  
Main Fax: (212) 218-5526  
Direct Fax: (917) 344-1262  
jyu@seyfarth.com

---

Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

This email may contain privileged or confidential information and is for the sole use of the intended recipient(s). If you are not the intended recipient, any disclosure, copying, distribution, or use of the contents of this information is prohibited and may be unlawful. If you have received this electronic transmission in error, please reply immediately to the sender that you have received the message in error, and delete it. Thank you.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK----- x  
Capstar Radio Operating Company, a Delaware  
Corporation,

Plaintiff,

v.

Anthony Campbell; Louis Carpino; Adam Gross;  
Jose Luis Torres; Citadel Broadcasting Corporation,  
a Nevada Corporation; and John Does 1-10,Defendants.  
----- x

No. 08 CV 2976 (LAK)

**STIPULATION AND ORDER  
REGARDING SCHEDULING  
AND CONFIDENTIALITY**

The parties, by their undersigned counsel, stipulate and agree as follows:

1. Discovery will take place on an expedited basis, as follows:

Service of document requests	So as to be received by 10 a.m. on March 26, 2008
Production of documents pursuant to document requests	So as to be received by 4 p.m. on March 31, 2008
Service of deposition notices	So as to be received by 10 a.m. on April 7, 2008
Depositions complete	By 5 p.m. on April 14, 2008
Exchange pre-marked exhibits and witness lists	So as to be received by 10 a.m. on April 21, 2008

2. The court will hold an evidentiary hearing on April 23, 2008. Pursuant to
- 
- Fed. R. Civ. P. 65(a)(2), this hearing also shall function as trial on the merits.

3. With respect to confidentiality, the following rules will govern:

- a. Any party producing documents, answers to interrogatories,
- 
- responses to requests for admissions, testimony or other
- 
- information in this litigation may designate such documents or
- 
- information, or any part thereof, as "Confidential Material."
- 
- Confidential Material includes those files, documents,

computerized information, testimony or other information furnished by a party in the course of pretrial discovery in this action which the designating party believes in good faith is subject to protection under Rule 26(c) of the Federal Rules of Civil Procedure.

- b. Confidential Material may not be disclosed by the receiving party to any person other than the following ("Authorized Persons"):
  - i. outside counsel of record in this litigation, and their partners, counsel, associates or employees
  - ii. any party to this litigation (or its officers, directors, in-house counsel and employees)
  - iii. independent experts and consultants retained by or associated with any party or its counsel to assist in the conduct of this litigation
  - iv. a party or non-party witness and counsel for such witness in the course of his or her examination at deposition in this action
  - v. persons who have prepared or assisted in the preparation of the Confidential Material or to whom the Confidential Material or copies thereof were addressed, delivered, or relate
  - vi. the Court in this action, and Court personnel, including stenographic reporters and/or certified videotape operators engaged in pretrial discovery;
  - vii. third-party vendors retained by or associated with any party or its counsel in order to assist in the conduct of this litigation; and
  - viii. any other person to whom the parties agree in writing, or as directed by Order of Court.
- c. In all cases, Confidential Material shall only be shared with Authorized Persons if reasonably necessary in connection with this litigation, and then shall be used or retained by such persons only to the extent and for the duration reasonably necessary under the circumstances, and in no event longer than the duration of the litigation.
- d. Before disclosing Confidential Material to any persons identified in Paragraph 2 above (other than the producing party and its

officers, directors, in-house counsel, employees, experts, and the Court and Court personnel), counsel contemplating disclosure shall require such persons to read a copy of this Stipulation and Order and sign a copy of the Confidentiality Agreement, in the form attached hereto as Exhibit A, affirming that the recipient:

- i. has read this Stipulation and Order and understands all of its terms;
  - ii. agrees to abide by and to be bound by the terms of this Stipulation; and
  - iii. agrees to submit to the Court's jurisdiction for purposes of enforcement of this Stipulation and Order by proceedings for contempt and/or proceedings for legal and/or equitable relief, including damages, for a breach thereof.
- e. Counsel shall retain each such Confidentiality Agreement until such time as the litigation, including all appeals, is concluded and counsel has retrieved all Confidential Material, or received certification of its destruction, from the recipient pursuant to Paragraph 10 below.
- f. The producing party shall mark any documents and/or information designated in good faith as Confidential Material by means of the legend "CONFIDENTIAL" on each page or section of a page so designated, or shall otherwise so designate sections of deposition transcripts or answers to interrogatories that contain such Confidential Material by means of a statement on the record at the time of deposition testimony or by written notice to the other party within thirty (30) days of receipt of the transcript of the testimony. For information produced in its native file format, the designation of material as "CONFIDENTIAL" shall appear in a database field entitled "TREATMENT" that shall be related to each document. Additionally, each hard drive, disk or other physical item containing native files shall be marked to indicate that it contains Confidential Material.
- g. If any Confidential Material is provided inadvertently to a discovering party without being marked "CONFIDENTIAL" in accordance with the terms of this Order, the failure to so mark the document and/or information shall not be deemed a waiver of the right to assert its confidentiality. A party may designate the documents and/or information as Confidential Material at a later date, at which time the provisions of this Stipulation and Order shall apply to such documents and/or information. If a document is designated Confidential Material and one or more copies of the

documents or the original is also produced but not so designated, the copies or original shall also be treated as Confidential Material if the recipient is actually aware of such fact.

- h. If any party objects to the designation of any documents and/or information as Confidential Material, and if the parties are unable to resolve such dispute informally, the party objecting to the designation may submit the dispute to the Court for resolution. Pending resolution of such dispute by the Court, the documents and/or information shall retain their designation as Confidential Material. A party shall be obligated to challenge the appropriateness of the designation of documents or materials as "CONFIDENTIAL" within thirty (30) days of the time of said party's receipt of such documents as so designated, or in the case of a deposition, within thirty (30) days of the date that the party receives notification that some portion of the transcript or the exhibits are to remain confidential, and in all cases, not more than sixty (60) days from the date of the deposition during which the documents were first used as exhibits, and failure to do so shall preclude any subsequent challenge to such designations.
- i. All documents and information received in pre-trial discovery in this action, including Confidential Material, and all other material, whether or not ultimately made part of the public record, shall be used by the receiving party solely for purposes of the above-captioned litigation, including any appeals, and for no other business, litigation or other purpose whatsoever.
- j. The production of Confidential Material pursuant to this Stipulation and Order is not a waiver of any privilege or right to claim the trade secret or confidential status of the documents, materials, or information produced.
- k. Any party may introduce relevant and admissible Confidential Material in court filings, at trial or at a hearing before the Court in this action provided that the party that produced the Confidential Material is given reasonable notice and an opportunity to seek relief from the Court. Upon a finding that the parties have commercially sensitive information at issue, or other good cause for filing under seal any Confidential Material included in any papers filed with the Court or otherwise disclosed to the Court, shall be labeled, "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" and shall be filed in a sealed envelope, together with a copy of the motion requesting that the material be sealed and not disclosed unless ordered by the Court. Where possible, only confidential portions of filings with the Court shall be filed under seal.



1. Except as may be otherwise agreed by the parties, not later than sixty (60) days after the conclusion of this litigation, including all appeals, the receiving party shall either destroy the Confidential Material or return the Confidential Material to the producing party, except for Confidential Material that has been incorporated into work product, and shall so certify in writing to the producing party.

4. This Stipulation shall be without prejudice to the right of any party to object to any discovery request on the grounds that the information requested is not relevant or otherwise discoverable.

5. In the event that a party inadvertently produces material that is protected by the attorney-client privilege, work product doctrine, or any other privilege, within ten (10) business days after the producing party actually discovers that such production was made, the producing party may make a written request that the other parties return the inadvertently produced privilege document along with any copies made thereof. The parties who received the inadvertently produced document will either return the document to the producing party or destroy the document immediately upon receipt of the written request, as directed by the producing party. By returning or destroying the document, the receiving party is not conceding that the document is privileged and is not waiving its right to later challenge the substantive privilege claim, provided that it may not challenge the privilege claim by arguing that the inadvertent production waived the privilege.

6. The restrictions set forth in the preceding paragraphs shall not apply to Confidential Material which:

- a. is or becomes disclosed to the public other than through violation of this Stipulation and Order, provided, however, that Confidential Material shall not lose that status by reason of its use or disclosure in any proceeding in this litigation;

- b. is acquired by the non-producing party from a third party lawfully possessing such Confidential Material; and
- c. was lawfully possessed by the non-producing party before discovery in this action.

7. Any third party producing its own documents pursuant to requests by a party in this litigation may invoke the protections of this Stipulation and Order in connection with such production. Further, within fifteen (15) days of any third party production of documents in connection with this action, each of the parties to this action shall be able to designate any of those documents as “Confidential Material” pursuant hereto, based on its own (and not the third party’s) interest in preserving the confidentiality of the documents so designated. During the fifteen (15) day period after any third party production of documents in connection with this action, all such documents shall be treated as “Confidential Material” pursuant to this Order, pending the parties’ designation of such documents consistent with this paragraph

8. Nothing in this Stipulation and Order shall:

- a. prevent or restrict any person from using or disclosing in any way documents it has produced or disclosed in the course of discovery proceedings herein;
- b. prevent or restrict any person from seeking additional protection with respect to the disclosure of particular documents;
- c. prevent or restrict any person from seeking relief from this Stipulation and Order for good cause shown;

- d. prohibit a party from producing Confidential Material in its possession pursuant to a subpoena issued by any court, administrative or legislative body, or any other person purporting to have authority to subpoena such Confidential Material; provided, however, that if such party receives a subpoena or other compulsory process seeking production or other disclosure of Confidential Material, that party shall give prompt written notice to counsel for the producing party, identifying the Confidential Material at issue, and, unless prohibited by applicable law, enclosing a copy of the subpoena or other compulsory process in order that the producing party may protect its interest in said Confidential Material. When possible, at least ten (10) days written notice before production or other disclosure shall be given and, in all circumstances, reasonable efforts shall be made to provide written notice prior to production or disclosure.

Dated: New York, New York  
March 25, 2008

SEYFARTH SHAW LLP

DEBEVOISE & PLIMPTON LLP

By: \_\_\_\_\_  
L. Lynnette Sarno (LS-2421)

By: \_\_\_\_\_  
Jeremy Feigelson (JF-4963)

620 Eighth Avenue  
New York, New York 10011  
(212) 218-5500

919 Third Avenue  
New York, New York 10022  
(212) 909-6000

*Attorneys for Plaintiff*

*Attorneys for Defendants*

SO ORDERED:

\_\_\_\_\_  
U.S.D.J.

**CONFIDENTIALITY AGREEMENT**

I, \_\_\_\_\_, hereby acknowledge and agree that:

1. I have read the Scheduling and Confidentiality Stipulation ("Stipulation"), entered in the civil action captioned *Capstar Radio Operating Co. v. Campbell et al.*, No. 08 CV 2976, in the United States District Court for the Southern District of New York.

2. I understand the terms of the Stipulation.

3. I hereby agree to be bound by the terms of the Stipulation and understand that a violation thereof may subject me to contempt proceedings and to legal and equitable remedies, including damages.

4. I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that a party which asserts the confidential interest shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach. I agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

5. I hereby irrevocably submit to the jurisdiction of the United States District Court for the Southern District of New York, or any other court of competent jurisdiction, for purposes of ensuring compliance with the terms and conditions of the Stipulation and for civil remedies in the form of legal and equitable relief, including damages, for any breach thereof.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company

**TAB C**

-- JFE47E96683253A

---

8:52 PM 3/25/2008 Transmission Record

Received from remote ID ""

Unique ID: "JFE47E96683253A"

Elapsed time: 1 minutes, 10 seconds.

Used channel 1 on server "NYFAX01".

ANI: "2122185500"

AOC: 0, 0, 0

Resulting status code (0/352; 0/0): Success

Pages sent: 1 - 4

8:54 PM 3/25/2008 Print Record

Printed on printer 32WHS in 0 minutes, 0 seconds.

Successfully printed 4 pages (1 copy) for user JFEIGELS



620 Eighth Avenue  
New York, New York 10018-1405  
(212) 218-5500  
Fax (212) 218-5526  
www.seyfarth.com

## Facsimile Transmission

Date: March 25, 2008

RECIPIENT	COMPANY	PHONE NO.	FAX NO.
Jeremy Feigelson	Debevoise & Plimpton LLP	212-909-6595	212-521-7230

FROM: L. Lynnette Sarno

PHONE: (212) 218-5528

RE: REPLY FAX NO.: (212) 218-5526

File No:	Number of Pages, Including Cover:
----------	-----------------------------------

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Hard copy to follow | <input type="checkbox"/> Hard copy will not follow             |
| <input type="checkbox"/> Per your request               | <input type="checkbox"/> Please review and revise if necessary |
| <input type="checkbox"/> Please telephone me            |  |

### MESSAGE:

Please see attached.

THE INFORMATION CONTAINED IN THIS FACSIMILE IS CONFIDENTIAL AND MAY ALSO CONTAIN PRIVILEGED ATTORNEY-CLIENT INFORMATION OR WORK PRODUCT. THE INFORMATION IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHOM IT IS ADDRESSED. IF YOU ARE NOT THE INTENDED RECIPIENT OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY USE, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THE FACSIMILE IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ADDRESS ABOVE VIA THE U.S. POSTAL SERVICE. THANK YOU.

ANY TAX INFORMATION OR WRITTEN TAX ADVICE CONTAINED HEREIN (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED TO BE AND CANNOT BE USED BY ANY TAXPAYER FOR THE PURPOSE OF AVOIDING TAX PENALTIES THAT MAY BE IMPOSED ON THE TAXPAYER. (THE FOREGOING LEGEND HAS BEEN AFFIXED PURSUANT TO U.S. TREASURY REGULATIONS GOVERNING TAX PRACTICE.)

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE PHONE (212) 218-5500 AS SOON AS POSSIBLE.





620 Eighth Avenue  
New York, New York 10018-1405  
(212) 218-5500  
fax (212) 218-5528  
www.seyfarth.com

Writer's direct phone  
(212) 218-5528

Writer's e-mail  
lsarno@seyfarth.com

Writer's direct fax

March 25, 2008

**VIA FACSIMILE (212) 521-7230**  
**AND U.S. MAIL**

Jeremy Feigelson, Esq.  
Debevoise & Plimpton LLP  
919 Third Avenue  
New York, New York 10022

Re: Capstar Radio Operating Company v. Citadel Broadcasting Corporation, et al.  
Docket No. 08 CV 2976  
(LAK)

Dear Mr. Feigelson:

Enclosed is a Notice of Voluntary Dismissal Without Prejudice, pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure, in the above referenced matter. We have electronically filed the foregoing Notice of Voluntary Dismissal Without Prejudice with the Clerk of the District Court using the CM/ECF system. However, we learned that your firm has yet to file a Notice of Appearance and has not filed any papers in this action. Accordingly, we are forwarding a copy to you.

Very truly yours,

SEYFARTH SHAW LLP

A handwritten signature in black ink, appearing to read "L. Lynnette Sarno".

L. Lynnette Sarno

cc: Gloria Galant

NY1 26507613.1

ATLANTA BOSTON CHICAGO HOUSTON LOS ANGELES NEW YORK SACRAMENTO SAN FRANCISCO WASHINGTON, D.C. BRUSSELS

L. Lynnette Sarno (LS-2421)  
 Gloria Galant (GG-2818)  
 SEYFARTH SHAW LLP  
 620 Eighth Avenue  
 New York, New York 10018  
 (212) 218-5500

Attorneys for Plaintiff Capstar Radio Operating Company

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

-----X	
Capstar Radio Operating Company, a Delaware Corporation,	:
	:
	:
	:
Plaintiff,	:
	:
	:
v.	:
	:
Anthony Campbell; Louis Carpino; Adam Gross;	:
Jose Luis Torres; Citadel Broadcasting Corporation,	:
a Nevada Corporation; and John Does 1-10,	:
	:
Defendants.	:
-----X	

**ECF CASE**

**08 Civ. 2976**

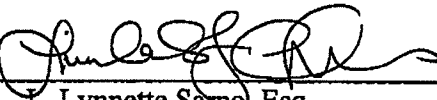
**NOTICE OF  
 VOLUNTARY DISMISSAL  
WITHOUT PREJUDICE**

PLEASE TAKE NOTICE THAT, plaintiff Capstar Radio Operating Company ("Capstar"), by its undersigned counsel, hereby dismisses *without prejudice*, all claims and causes of action against defendants Anthony Campbell; Louis Carpino; Adam Gross; Jose Luis Torres; Citadel Broadcasting Corporation, a Nevada Corporation; and John Does 1-10 (collectively, "Defendants") in the above-captioned action, without costs or attorneys' fees to

any party, pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure. No defendants have served an answer or motion for summary judgment herein.

Dated: New York, New York  
March 25, 2008

SEYFARTH SHAW LLP

By:   
L. Lynnette Sarno, Esq.  
Gloria Galant, Esq.  
620 Eighth Avenue  
New York, New York 10018  
(212) 218-5500

Attorneys for Plaintiff  
Capstar Radio Operating Company

**TAB D**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
Capstar Radio Operating Company, a Delaware  
Corporation,

Plaintiff,

v.

Anthony Campbell; Louis Carpino; Adam Gross;  
Jose Luis Torres; Citadel Broadcasting Corporation,  
a Nevada Corporation; and John Does 1-10,

Defendants.  
----- x

No. 08 CV 2976 (LAK)

**ANSWER OF INDIVIDUAL  
DEFENDANTS**

Defendants Anthony Campbell, Louis Carpino, Adam Gross and Jose Luis Torres (the "Individual Defendants"), by their undersigned attorneys, Debevoise & Plimpton LLP, hereby answer the Complaint in this matter as follows:

1. States legal conclusions as to which no responsive pleading is required.

To the extent a responsive pleading is required, deny.

2. States legal conclusions as to which no responsive pleading is required.

To the extent a responsive pleading is required, deny.

3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations.

4. Deny, except admit that in certain cases Individual Defendants have contacted and/or solicited clients of Clear Channel as they are lawfully entitled to do.

5. Deny knowledge or information sufficient to form a belief as to the truth of the allegations.

6. Deny knowledge or information sufficient to form a belief as to the truth of the allegations.

7. Admit.

8. This allegation is directed to defendant Campbell. He admits.

9. This allegation is directed to defendant Campbell. He admits.

10. This allegation is directed to defendant Gross. He admits.

11. This allegation is directed to defendant Gross. He admits.

12. This allegation is directed to defendant Carpino. He admits.

13. This allegation is directed to defendant Carpino. He admits, except avers that the proper spelling of the station's name is WLTW and not WLTU.

14. This allegation is directed to defendant Torres. He admits.

15. This allegation is directed to defendant Torres. He admits.

16. Deny knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Citadel is a radio company.

17. Deny, except admit that Citadel and Clear Channel each are radio station companies, with certain stations operating in the same markets.

18. Deny knowledge or information sufficient to form a belief as to the truth of the allegations.

19. This paragraph states legal conclusions to which no responsive pleading is required. To the extent that a responsive pleading is required, deny.

20. This paragraph states legal conclusions to which no responsive pleading is required. To the extent that a responsive pleading is required, admit on behalf of the Individual Defendants.

21. Deny, except admit that Clear Channel is in the radio business.

22. Admit.

23. Deny knowledge or information sufficient to form a belief as to the truth of the allegations.

24. Deny knowledge or information sufficient to form a belief as to the truth of the allegations.

25. Deny knowledge or information sufficient to form a belief as to the truth of the allegations.

26. Deny knowledge or information sufficient to form a belief as to the truth of the allegations.

27. Deny knowledge or information sufficient to form a belief as to the truth of the allegations.

28. Deny.

29-32. Deny, except admit that Radio Fusion is a third-party software program used by Clear Channel and other radio companies for certain purposes.

33-37. Deny, except admit that Best Rate is a third-party software program used by Clear Channel and other radio companies for certain purposes.

38-39. Deny, except admit that Radio Fusion is a third-party software program used by Clear Channel and other radio companies for certain purposes.

40-50. Deny knowledge or information sufficient to form a belief as to the truth of the allegations.

51. Admit.

52-53. Deny, except admit that account executives are responsible for selling advertising, in part through certain of the techniques enumerated.

54-55. Deny knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that each Individual Defendant received and acknowledged certain employment materials, possibly including the enumerated materials, and signed a document containing the quoted language.

56. Deny.

57-76. Each Individual Defendant denies the allegations relevant to him, except admits that he was hired on or about the date stated as to him in the Complaint, signed a document entitled Confidentiality, Trade Secrets and Non-Compete Agreement, received and acknowledged certain employee information materials and attended certain training.

77. Deny, except admit that each of the Individual Defendants advised Clear Channel on or about March 5, 2008 that they were resigning and would be working at WABC-AM.

78. Admit.



79. Admit.

80. Deny, except admit that WABC-AM, WLTW and WKTU are all radio stations in the New York market.

81-84. Deny knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Clear Channel is aware of the Individual Defendants' new employment.

85. Deny.

86. Deny, except admit that Carpino attended an event upon request from a person who in another capacity is a Clear Channel client.

87. Deny.

88. Deny knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Clear Channel claims to be aware of an effort by a Citadel station to market a version of a non-proprietary advertising program that is widely used in the radio industry.

89. Deny knowledge or information sufficient to form a belief as to the truth of the allegations.

90-92. Deny knowledge or information sufficient to state a belief as to the truth of the allegations.

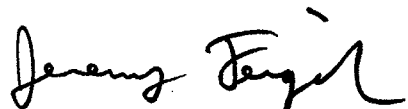
93-94. Deny, except admit that Citadel has hired account executives in the Chicago market.

95-143. These paragraphs state legal conclusions as to which no responsive pleading is required. To the extent that a responsive pleading is required, deny.

WHEREFORE, the Individual Defendants deny that plaintiff is entitled to any of the relief requested or to any other relief, and request that the Complaint be dismissed with prejudice and with an award of costs, fees and such other relief as the Court deems just and proper.

Dated: New York, New York  
March 25, 2008

DEBEVOISE & PLIMPTON LLP

By:   
Jeremy Feigelson (JF-4963)

919 Third Avenue  
New York, New York 10022  
(212) 909-6000

*Attorneys for Defendants*

## **EXHIBIT G**

DEBEVOISE & PLIMPTON LLP

919 Third Avenue  
New York, NY 10022  
Tel 212 909 6000  
www.debevoise.com

Jeremy Feigelson  
Partner  
Tel 212 909 6230  
Fax 212 521 7230  
jfeigelson@debevoise.com

April 22, 2008

**BY HAND**

Honorable Lewis A. Kaplan  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, NY 10007-2012

**Capstar v. Campbell et al.  
No. 08 CV 2976 (LAK)**

Dear Judge Kaplan:

On behalf of defendants, we write to advise the court that this case has neither settled nor progressed through discovery. Having received plaintiff's motion in support of its attempt at voluntary withdrawal, which defendants will oppose, we ask that the Court schedule a status conference to be attended by principals with settlement authority.

On March 24, Your Honor denied a TRO and expressed the view that this case should settle promptly and without further substantial expenditures. Defendants agree, but have been unsuccessful in accomplishing that.

Instead, Clear Channel has increased its litigation activity. In addition to the motion it filed yesterday in this case, Clear Channel opted to pursue a similar case before Judge Zagel in the Northern District of Illinois to an evidentiary hearing. On the basis of that hearing, Judge Zagel recently declined to extend the TRO that he originally had granted ex parte. Clear Channel has responded to that decision by filing a jury demand and serving five deposition notices. Clear Channel also has filed still another case involving a different employee, this one in Illinois state court.

Tentative settlement discussions began after the March 24 hearing before Your Honor, and on that basis the parties did not pursue discovery in this case. The expedited discovery and hearing schedule discussed at the March 24 hearing was never reduced to a written order; accordingly, what plaintiff's counsel refers to in their letter as a "stay" of discovery was actually an informal agreement. Settlement discussions were brought to a halt approximately two weeks ago by Clear Channel's decision to take the Chicago case

Honorable Lewis A. Kaplan

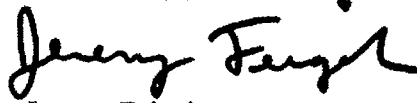
2

April 22, 2008

to hearing. The only "settlement offer" we received from Clear Channel included a demand that defendants consent to a permanent injunction as if Clear Channel had prevailed on the merits in both New York and Chicago.

Defense counsel and principals are available for a conference at the Court's convenience, including immediately. Alternatively, it may be constructive for the Court to set the conference for approximately 30 days out in order to give the parties an opportunity to discuss the matter, particularly in light of the ruling in Chicago. If the Court agrees that a conference is appropriate, then it also might be appropriate to stay further briefing on Clear Channel's latest motion. Defendants agree with plaintiff that there should be no hearing on April 23.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Jeremy Feigelson". The signature is fluid and cursive, with a large initial "J" and a stylized "F".

Jeremy Feigelson

cc (by hand): L. Lynette Sarno, Esq.

**CERTIFICATE OF SERVICE**

I hereby certify that on May 9, 2008, I electronically filed the foregoing Plaintiff's Reply Memorandum of Law in Further Support of Its Motion for an Order Deeming Its Notice of Voluntary Dismissal Without Prejudice Effective Pursuant to Rule 41(a)(1)(A), and the Declaration of L. Lynnette Sarno, Esq., together with Exhibits F and G with the Clerk of the District Court using the CM/ECF system, which sent notification of such filing to the following:

Jeremy Feigelson, Esq.  
Debevoise & Plimpton LLP  
919 Third Avenue  
New York, New York 10022

*Attorneys for Defendants*

s/ L. Lynnette Sarno  
L. Lynnette Sarno